

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JAY ROEHL,**

**Plaintiff(s),**

**vs.**

**CIVIL NO.02-1336 WJ/WDS**

**BANK OF AMERICA, N.A. et. al.,**

**Defendant(s).**

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

This matter comes before the Court on Rothstein Defendants' Motion for Sanctions Under Rule 11, Fed. Rules of Civil Procedure (Doc. 32). There has been no response from the pro se Plaintiff.

In their motion Defendants appear to request sanctions against Plaintiff on two grounds. The ground that is discussed at length argues that the pleadings of the Plaintiff are ghost written and that sanctions are appropriate under Rule 11 for such conduct. A second ground stated in the motion cites Plaintiff's refusal to dismiss the complaint after being informed by Defendants that it was without merit.

The Court takes notice of the factual background of Plaintiff's litigious activities which surround and are all related to this final (one would hope) complaint. Those facts are well set out in the Rothstein Defendants' Memorandum Brief in Support of Motion to Dismiss or in the Alternative for Summary Judgment (Doc. 35) which the Court adopts and which will not be repeated here. As the District Court has already ruled, Plaintiff's most recent complaint does not state a claim under

Section 1983 and has been dismissed. This Court, in reviewing the factual allegations of Plaintiff's complaint and the undisputed facts contained in Defendants memoranda in support of its motion to dismiss, recommends a finding that the claims against the Rothstein Defendants were totally without factual basis and were frivolous. The Court also recommends that the District Court Judge find, even taking into consideration Plaintiff's pro se status, that his actions in filing the complaint in this case were not reasonable. Plaintiff's extensive litigation history in state and federal court on this one matter, the fact that he was given specific notice by Defendants of the lack of a factual or legal basis for his filing of this lawsuit (Exhibit A to this Motion), and the fact that he persisted in the claims justify an award of sanctions for Plaintiff's frivolous claims against the Rothstein Defendants.

Defendants spend a great deal of their memorandum arguing that sanctions are appropriate when pleadings filed by a pro se Plaintiff were ghost written by an attorney. This Court has no problem with the general proposition or with the law cited. The Court is not, however, persuaded by the evidence produced that the pleadings in this case were ghost written by an attorney, let alone by a specific attorney. Given the Court's previous finding that sanctions are appropriate for the frivolous filing of the complaint, it is not necessary to further pursue this line of inquiry.

It is therefore recommended that the District Court Judge sanction Plaintiff for his frivolous filing of the complaint in this matter in an amount which would reimburse the Rothstein Defendants for some or all of their attorneys' fees in filing their motion to dismiss.



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**W. DANIEL SCHNEIDER**  
**United States Magistrate Judge**

